

## **CITY OF ALAMEDA**

### **Memorandum**

To: Honorable Mayor and  
Members of the City Council

Honorable Chair and  
Members of the Community Improvement Commission

From: John A. Russo  
City Manager/Executive Director

Date: September 20, 2011

Re: Approve a Remittance Agreement Pursuant to California Health and Safety  
Code Section 34194.2 Obligating the Community Improvement Commission  
to Reimburse the City for its Required Remittances to the State of California  
to Participate in the Voluntary Alternative Redevelopment Program

---

### **BACKGROUND**

On June 29, 2011, as part of adopting the State of California Fiscal Year (FY) 2011-12 budget, the Governor signed two trailer bills, AB X1 26 and AB X1 27, into law. The legislation was effective on June 29, 2011. AB X1 26 eliminates redevelopment agencies as of October 1, 2011. AB X1 27 provides an opportunity for redevelopment agencies to "opt-in" and continue to operate and function if the sponsoring jurisdiction (the City of Alameda) adopts an ordinance by October 1, 2011.

On July 19, 2011, the City Council adopted an urgency ordinance to permit the continued existence and operation of the Community Improvement Commission of the City of Alameda (CIC). The primary obligation incurred by sponsoring communities enacting an opt-in ordinance is the obligation to make annual payments ("remittances") to the County Auditor-Controller beginning in FY11-12, and in all succeeding years the agency is in existence. By opting in, the City has agreed to make the remittances on behalf of the CIC. Remittances may be made from any available funds, including CIC funds. Prior to making the first remittance, it was recommended that the CIC and City Council approve an agreement whereby the CIC will transfer a portion of its tax increment to the City in an amount not-to-exceed the required annual remittance.

On August 11, 2011, the California Supreme Court issued an order in *CRA v. Matosantos* which stays parts of ABX1 26 and almost all of ABX1 27. The provisions of ABX1 26 that remain in effect after the Court's order require the CIC to preserve its assets and prevent the CIC from entering into new contracts or taking on new obligations. The still-active provisions of ABX1 26 allow and require agencies to continue to meet their existing obligations and make any payments necessary for

**CC/CIC**  
**Agenda Item #3-A**  
**09-20-11**

Honorable Chair and  
Members of the Community Improvement Commission

ongoing agency administration. The only portion of ABX1 27 that remains in effect is Health & Safety Code Sec. 34194(b)(2), which provides for the State Department of Finance (DOF) to determine the 2011-12 remittance payments owed by cities opting in to the Voluntary Alternative Redevelopment Program, allows the cities to appeal those determinations by August 15, 2011, and directs the DOF to respond to those appeals by September 15, 2011. Given the uncertainty surrounding the current status of redevelopment, it is recommended that the City Council and CIC approve the attached Remittance Agreement to ensure that the City and CIC are in the best possible position regarding the on-going future of redevelopment once the Supreme Court issues its final ruling, which is expected by January 15, 2012.

### DISCUSSION

Because of the importance, under ABX1 27, of fully describing all debts in the 2011 Statement of Indebtedness (SOI), and notwithstanding the fact that ABX1 27 is currently stayed, the California Redevelopment Association (CRA) recommends that the best course for cities such as Alameda that have already adopted an ABX1 27 Ordinance is to enter into a conditional Remittance Agreement, as allowed under Health & Safety Code Section 34194.2. The agreement will provide for CIC reimbursement of City remittance payments in the event that the Court upholds ABX1 27. The CIC would then be able to conditionally include the Remittance Agreement in its 2011 SOI, explaining that the Agreement will only take effect, and the obligations therein only become binding, in the event the Supreme Court upholds ABX1 27. The SOI is due to the State on September 30, 2011.

If the Supreme Court upholds ABX 1 27, remittances are due on January 15 and May 15 of each year the redevelopment agency is in existence. Based on preliminary calculations prepared by the California Redevelopment Association (CRA), the City of Alameda's share of the initial \$1.7 billion payment to the State will be \$5.2 million. However, the CIC already has submitted an appeal of the assessment based on debt issued and not captured in the formula and existing obligations related to the Alameda Landing project.

Funds to make the required annual payment must come from the CIC's 80% (non-housing) fund. However, the CIC will be exempt from making its full deposit into the 20% (Low- and Moderate-Income Housing) fund in FY11-12, to the extent it makes a finding that there are insufficient other funds, and using those funds is necessary to make all or a portion of the FY11-12 remittance.

It is recommended that the City Council and the CIC approve the remittance agreement effect of AB 26 and AB 27. If the Court issues a final determination that ABX1 26 and ABX1 27 are invalid, this agreement shall be null and void and of no further force or effect.

Honorable Chair and  
Members of the Community Improvement Commission

### FINANCIAL IMPACT

Staff has identified up to \$5.2 million in CIC housing and non-housing funds that may need to be remitted to the County Auditor-Controller for FY11-12, pending the outcome of the City's appeal, as a requirement to continue to operate the CIC. The necessary budget adjustments and appropriations will be presented to the CIC for its review and approval following the State's analysis of the City's appeal. In addition, analysis is underway to estimate future years' required remittances, and that information will be provided to the CIC.

### ENVIRONMENTAL REVIEW

Pursuant to Title 14 of the California Code of Regulations, Section 15378(b)(4), enacting an urgency ordinance opting into the alternative redevelopment program is exempt from the requirements of the California Environmental Quality Act (CEQA). The proposed urgency ordinance is not a "project," but instead consists of the creation and continuation of a governmental funding mechanism for potential future projects and programs, and does not commit funds to any specific project or program that may result in a potentially significant environmental impact.

### RECOMMENDATION

Approve a Remittance Agreement pursuant to California Health and Safety Code Section 34194.2 obligating the CIC to reimburse the City for its required remittances to the State of California to participate in the voluntary alternative redevelopment program.

Respectfully submitted,



Nanette Mocanu  
Economic Development Division Manager

Approved as to funds and account,



Fred Marsh  
Controller

Exhibit:

1. Remittance Agreement

**REMITTANCE AGREEMENT  
PURSUANT TO  
CALIFORNIA HEALTH AND SAFETY CODE SECTION 34194.2**

**THIS REMITTANCE AGREEMENT** (this "**Agreement**") is entered into this 20th day of September, 2011, by and between the CITY OF ALAMEDA, a charter city and municipal corporation (the "**City**") and the Community Improvement Commission of the City of Alameda, a public body, corporate and politic (the "**CIC**"), with reference to the following facts:

A. The CIC is a redevelopment agency organized and existing under the California Community Redevelopment Law (Health and Safety Code Section 33000 *et seq.*) and is responsible for implementing the Community Improvement Plans for the Alameda Point Improvement Project, the Business and Waterfront Improvement Project and the West End Community Improvement Project ("**Plans**") covering certain areas within the City ("**Project Areas**").

B. Assembly Bill No. x1 26 ("**AB 26**") and Assembly Bill No. x1 27 ("**AB 27**") were passed by the State Legislature on June 15, 2011 and signed by the Governor on June 29, 2011.

C. AB 26 requires that each redevelopment agency be dissolved unless, pursuant to AB 27 (to be codified as Part 1.9 of the California Health and Safety Code, commencing with Section 34192), the community that created it enacts an ordinance committing it to participate in what is commonly known as the voluntary alternative redevelopment program and to make certain statutorily-specified payments described in Health and Safety Code Section 34194 to the County Auditor-Controller ("**Alternative Redevelopment Program**" or "**Program**").

D. The City Council of the City of Alameda (the "**City Council**") has adopted Ordinance No. 3034 to comply with AB 27 and participate in the Alternative Redevelopment Program (the "**Ordinance**").

E. An action challenging the constitutionality of AB 26 and AB 27 has been filed on behalf of cities, counties and redevelopment agencies and is being litigated by the League of California Cities and California Redevelopment Association, and the Supreme Court of the State of California has stayed, in part, the effect of AB 26 and AB 27.

F. Pursuant to the Ordinance, the City has committed to make the remittances required by the Alternative Redevelopment Program, to otherwise comply with the Program's requirements and, in doing so, to authorize the continuation of the CIC after enactment of AB 26 and AB 27.

G. The City has committed to make the remittances under protest and without prejudice to the City's right to recover such amounts and interest thereon in the event there is a final determination by the Supreme Court that AB 26 and AB 27 are invalid.

H. Notwithstanding the Supreme Court's order staying the effectiveness of AB 26 and AB 27, the City and CIC desire to prepare for the Supreme Court's ultimate determination on the merits of the litigation and to be prepared for continued operation of the CIC if AB 26 and AB 27 are found to be a valid exercise of the State Legislature's power.

I. Execution of this Agreement will allow the City and CIC to continue redevelopment activities immediately upon the Supreme Court's determination on the merits of the litigation, or upon its lifting of the stay as to AB 26 and AB 27, should either take place.

J. In the event the Supreme Court issues a final determination that AB 26 and AB 27 are invalid, this Agreement shall be null and void and of no further force or effect, as the City has already determined that the Ordinance shall be deemed to be null and void and of no further force or effect in such event.

K. Unless and until AB 26 and AB 27 are invalidated, the City, pursuant to Health and Safety Code Section 34194.1, may use any available funds not otherwise obligated for other uses in making remittances to the County Auditor-Controller pursuant to Health and Safety Code Section 34194 or 34194.5.

L. Pursuant to Health and Safety Code Section 34194.2, the City may enter into an agreement with the CIC, whereby the Agency will transfer a portion of the taxes allocated to it pursuant to Health and Safety Code Section 33670 ("**Tax Increment**") to the City, in an amount not to exceed the annual remittance required that year pursuant to Chapter 3 of Part 1.9, for the purpose of financing activities within the redevelopment area that are related to accomplishing CIC project goals ("**City Remittances**").

M. The purpose of this Agreement is to provide for the foregoing transfer of Tax Increment funds, should the Supreme Court uphold the validity of AB 26 and AB 27, in this current fiscal year and forthcoming fiscal years, in amounts sufficient to pay the annual City Remittances required by the Alternative Redevelopment Program and to allow the City to undertake projects, programs and activities related to the CIC's project goals, including the administrative costs of undertaking those projects, programs, and activities.

N. The obligations of the CIC under this Agreement shall constitute an indebtedness of the CIC for the purpose of carrying out the Plans for the Project Areas.

O. As further stated in the Ordinance, the City reserves the right, whether any City Remittance has been paid, to challenge the legality of AB 26 and AB 27.

**NOW, THEREFORE**, the parties hereto do mutually agree as follows:

## **I. INTRODUCTORY PROVISIONS**

The recitals above are an integral part of this Agreement and set forth the intentions of the parties and the premises on which the parties have decided to enter into this Agreement.

## **II. OBLIGATIONS OF THE PARTIES**

1. The CIC shall transfer to the City in a timely manner Tax Increment or any other available funds in an amount sufficient for the City to make the City Remittances required by the Alternative Redevelopment Program. The amount to be transferred to the City shall equal the entire amount determined by the State Director of Finance to be the City's obligation under the Program, subject to the City's right to appeal the amount of remittance to the Director pursuant to the Program. The City and CIC agree that if the CIC does not have sufficient Tax Increment or other funds available to make the full City Remittance required in any fiscal year, City shall have no obligation to use City funds for such purpose, in which case the CIC may be deemed to be dissolved under Health and Safety Code Section 34195. Notwithstanding the foregoing, CIC shall have no obligation to transfer any monies under this subsection 1 for the duration of the Supreme Court's stay.

2. Subject to the timely receipt from the CIC of Tax Increment or other funds sufficient to make the annual City Remittances required by the Program, the City shall pay to the Alameda County Auditor-Controller, no later than January 15 and May 15 of each year, one-half of the City Remittance amount due for each fiscal year while this Agreement is in effect. The City's obligation to make such City Remittance payments shall be a special limited fund obligation of the City payable solely from Tax Increment or other available funds paid to the City by the CIC pursuant to this Agreement. Nothing contained in this Agreement shall be deemed to be a pledge of the City's general fund revenues or any other assets to pay the City Remittances for any fiscal year. Notwithstanding the foregoing, City shall have no obligation to transfer any monies under this subsection 2 for the duration of the Supreme Court's stay.

## **III. TERMINATION**

This Agreement shall be deemed null and void if AB 26 and AB 27 are determined by a court of competent jurisdiction to be unconstitutional, illegal, invalid or otherwise unenforceable or inapplicable, for any reason or in any manner. Notwithstanding the foregoing or any other provision of this Agreement, either the City or the CIC may terminate this Agreement at any time, for any reason or no reason, by written notice to the other party.

## **IV. LIABILITY AND INDEMNIFICATION**

In contemplation of the provisions of California Government Code Section 895.2 imposing certain tort liability jointly upon public entities solely by reason of such entities

being parties to an agreement as defined by Government Code Section 895, the parties hereto, as between themselves, pursuant to the authorization contained in Government Code Sections 895.4 and 895.6, shall each assume the full liability imposed upon it, or any of its officers, agents or employees, by law for injury caused by negligent or wrongful acts or omissions occurring in the performance of this Agreement to the same extent that such liability would be imposed in the absence of Government Code Section 895.2. To achieve the above-stated purpose, each party indemnifies, defends and holds harmless the other party for any liability, losses, cost or expenses that may be incurred by such other party solely by reason of Government Code Section 895.2.

## **V. ENTIRE AGREEMENT; WAIVERS; AND AMENDMENTS**

1. This Agreement shall be executed in duplicate originals, each of which is deemed to be an original. This Agreement constitutes the entire understanding and agreement of the parties, and supersedes all negotiations or previous agreements between the parties with respect to the subject matter of this Agreement.

2. This Agreement is intended solely for the benefit of the City and the CIC. Notwithstanding any reference in this Agreement to persons or entities other than the City and CIC, there shall be no third party beneficiaries under this Agreement.

3. Any waiver or amendment of the provisions of this Agreement must be in writing and signed by the authorized representatives of the parties.

4. As to the performance of any obligation under this Agreement of which time is a component, the performance of such obligation within the time specified is of the essence.

## **VI. SEVERABILITY**

If any term, provision, covenant or condition of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions shall continue in full force and effect unless the rights and obligations of the parties have been materially altered or abridged by such invalidation, voiding or unenforceability.

## **VI. BINDING ON SUCCESSORS**

This Agreement shall be binding on and shall inure to the benefit of all successors and assigns of the parties, whether by agreement or operation of law. This Agreement shall survive any full or partial merger of the City and CIC and shall remain in effect and be fully enforceable according to its terms.

*[signatures next page]*

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first set forth above.

CITY OF ALAMEDA

COMMUNITY IMPROVEMENT  
COMMISSION OF THE CITY OF  
ALAMEDA

By: \_\_\_\_\_  
Marie Gilmore, Mayor

By: \_\_\_\_\_  
John Russo, Executive Director

Attest:


Attest:


\_\_\_\_\_  
Lara Weisiger, City Clerk

\_\_\_\_\_  
Lara Weisiger, Secretary

Approved As To Form:

Approved As to Form:

By:  \_\_\_\_\_  
Donna Mooney,  
Acting City Attorney

By:  \_\_\_\_\_  
Donna Mooney,  
Acting General Counsel